STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 5, 2022)

JOHN OLIVEIRA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2021-03645**
	:	
RHODE ISLAND LOTTERY and TWIN RIVER-TIVERTON, LLC,	:	
	:	
Defendants.	:	

STERN, J. Before the Court is Defendants Rhode Island Lottery (Lottery) and Twin River-Tiverton, LLC's (Twin River) Joint Motion to Partially Dismiss Plaintiff's Amended Complaint,[1] which seeks dismissal of "all claims . . . to the extent they seek damages in excess of $30,607.75, specifically Plaintiff's claim for $150,000 in damages."[2] *See* Defs.' Joint Mot. to Partially Dismiss Pl.'s Am. Compl. (Defs.' Mot.) 23; Defs.' Joint Suppl. Mot. to Partially Dismiss Pl.'s Am. Compl. (Defs.' Suppl. Mot.) 2-3. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14. For the following reasons, Defendants' Joint Motion to Partially Dismiss Plaintiff's Second Amended Complaint is GRANTED.

[1] Although Defendants' Joint Motion, filed March 3, 2022, seeks partial dismissal of Plaintiff's Amended Complaint, the Court recently granted Plaintiff leave to file a Second Amended Complaint. *See* Order (Sept. 9, 2022). Defendants' Joint Supplemental Motion, also filed September 9, 2022, addresses the newly-asserted Count V in the Second Amended Complaint, which includes a claim for "Threats, Intimidation & Coercion." (Second Am. Compl. ¶¶ 70-71.)

[2] Along with their Joint Motion to Partially Dismiss Plaintiff's Amended Complaint, Defendants also sought "leave to deposit $30,607.75 into the Registry of the Court." (Defs.' Mot. 7.) Defendants' motion to deposit funds was granted on April 11, 2022. *See* Order (Apr. 11, 2022).

I

Facts and Travel

Plaintiff is a self-described "regular active bettor/investor." (Pl.'s Opp'n to Defs.' Joint Mot. to Partially Dismiss Pl.'s Am. Compl. (Pl.'s Opp'n) 6.) On October 27, 2020, Plaintiff wagered $13,000 across six tickets at Twin River. (Pl.'s Second Am. Compl. ¶ 4.) He later realized that he did not have the tickets in his possession and traveled to Twin River to place a "freeze"[3] on the wagers, which Twin River promptly executed. *Id.* ¶¶ 5-7. It was there that Plaintiff discovered that his wagers yielded winnings amounting to $30,607.75. *Id.* ¶ 8. When he demanded his winnings, Twin River informed Plaintiff that it was "unable to make the requested payout because Twin River-Tiverton's retail Sportsbook Rhode Island House Rules (the 'House Rules') require presentation of the original tickets."[4] (Defs.' Mot. 4.) Plaintiff proceeded to file a *pro se* Complaint on May 27, 2021. *See* Compl.

On October 29, 2021, Plaintiff filed an Amended Complaint and represented that he had located his previously missing tickets. (Pl.'s First Am. Compl. ¶¶ 14-17.) Plaintiff alleged that his tickets were confiscated by Dartmouth Police during a traffic stop "a few days after" October 27, 2020, but were not inventoried following the stop. *Id.* ¶¶ 14-16. In July or August of 2021, Plaintiff learned that the tickets were in Dartmouth Police's possession. *Id.* ¶ 16. Before he could retrieve his tickets, however, Plaintiff was incarcerated at the Bristol County Jail in September 2021. *Id.* ¶¶ 1, 18. Plaintiff therefore prepared and signed a purported Power of Attorney (POA),

[3] "A 'freeze' alerts the casino that there is an issue with the presented ticket and allows for further investigation prior to anyone claiming the winnings." (Defs.' Mot. 4 n.4.)

[4] The pertinent House Rule is found in ¶ 2 under the subheading "Ticket Accuracy." (Defs.' Mot. Ex. B 2 ¶ 2.) Note that the House Rules are dated October 26, 2020, one day before these facts occur. Defendants state that the prior iteration of the House Rules, dated May 2019, has the same rule in effect. (Defs.' Mot. 4 n.7.) A near-identical rule exists in the May 2019 House Rules as well. (Defs.' Mot. Ex. C § 1(B)(b).)

authorizing Sean Murphy (Murphy) to retrieve the winning tickets and "to cash in the winning tickets on behalf of [Plaintiff]." (Pl.'s Opp'n 2.) *See also* Pl.'s First Am. Compl. ¶ 20.

Murphy traveled to the Dartmouth Police Department to retrieve Plaintiff's tickets and took possession of them. *See* Pl.'s First Am. Compl. ¶¶ 19-20. Plaintiff instructed Murphy to present Plaintiff's tickets to Twin River, collect the winnings, and wager those winnings on additional parlays on Plaintiff's behalf.[5] *Id.* ¶¶ 19-20, 29-31. On or about October 9, 2021, Murphy presented the tickets, but Twin River did not make a payout due to (1) the initial freeze placed on the tickets;

[5] The Court notes that Murphy was accompanied by another individual named Thomas Flannery (Flannery). (Second Am. Compl. ¶ 20.) However, only Murphy was purportedly authorized to make wagers on Plaintiff's behalf. *See id.* ¶¶ 29-31. Thus, the Court will consider Murphy's role going forward, not Flannery's.

The parlays are described in ¶¶ 29-31 of Plaintiff's Second Amended Complaint, which read:

> "29. Murphy (on behalf of John Oliveira using the POA) had been instructed to wager Fifteen Thousand Dollars ($15,000.00) on a two-team parlay: Game No. 474 Dallas Cowboys Money Line (-330) and Game No. 454 Tampa Bay Buccaneers Money Line (-475).
>
> "30. Murphy (on behalf of John Oliveira using the POA) was also instructed to wager Ten Thousand Dollars ($10,000.00) on a six-team parlay: Game No. 467 New England Patriots Money Line (-420); Game No. 462 Minnesota Vikings Money Line (-450); Game No[.] 465 Green Bay Packers Money Line (-150); Game No. 454 Tampa Bay Buccaneers Money Line (-475); Game No. 474 Dallas Cowboys Money Line (-330); and Game [N]o. 476 Arizona Cardinals Money Line (-240).
>
> "31. Murphy (on behalf of John Oliveira using the POA) was also instructed to wager Five [T]housand Dollars ($5,000.00) on a four-team parlay: Game No. 387 Alabama Crimson Tide Money [L]ine (-1000); Game No. 357 Georgia Bulldogs Money Line (-700); Game No. 324 Ohio State Buckeyes Money Line (-1700); and Game No. 402 San Diego Aztecs State Money (-1100)."

(2) "questions regarding the validity of the Power of Attorney form Mr. Murphy presented;"[6] and (3) the pending litigation. (Defs.' Mot. 5-6, 13-14.) Because Twin River did not tender the $30,607.75 to Murphy he was "forced to place lesser amount wagers on the same games[.]" (Pl.'s First Am. Compl. ¶ 33.)

The following week, Defendants verified the POA by visiting Plaintiff at the Bristol County Jail and inquiring whether he authorized Murphy to collect the winnings. (Pl.'s First Am. Compl. ¶¶ 38, 42-45; Defs.' Mot. 7.) When Defendants confirmed that the POA was legitimate, they were "prepared to make a payout to Plaintiff." (Defs.' Mot. 7.) However, Plaintiff avers that two of the parlays that he instructed Murphy to wager on were "winners," and argues that because Twin River wrongfully withheld Plaintiff's winnings, Plaintiff suffered a lost opportunity and now seeks $150,000 in damages. (Pl.'s First Am. Compl. 11; Defs.' Mot. 6.) Defendants offered to release the $30,607.75 if Plaintiff dismissed his claims, but Plaintiff refused. (Defs.' Mot. 14.)

On March 3, 2022, Defendants filed their Joint Motion to Partially Dismiss Plaintiff's Amended Complaint and also moved for "leave to deposit $30,607.75 into the Registry of the Court." *Id*. at 7. On April 11, 2022, the Court granted Defendants' motion to deposit $30,607.75 into the Registry of Court. *See* Order (Apr. 11, 2022). Plaintiff timely objected to Defendants' Motion to Partially Dismiss Plaintiff's Amended Complaint and also filed a Motion to file a Second Amended Complaint on August 12, 2022. The proposed Second Amended Complaint included a new count for "threats, intimidation and coercion." (Pl's Second Am. Compl. ¶¶ 70-71.) The Court granted the Plaintiff's Motion and entered a Scheduling Order. Defendants timely

[6] Defendants note that there were "several discrepancies with the Power of Attorney: the signature and notary were not the same date, and the signature appeared different from Plaintiff's signature on the Complaint." (Defs.' Mot. 7 n.9.)

replied to the Plaintiff's objection on August 19, 2022 and supplemented their motion to address the new count on September 9, 2022. *See* Defs.' Joint Suppl. Mot.

II

Standard of Review

A motion to dismiss under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure "has a narrow and specific purpose: 'to test the sufficiency of the complaint.'" *Mokwenyei v. Rhode Island Hospital*, 198 A.3d 17, 21 (R.I. 2018) (quoting *Multi-State Restoration, Inc. v. DWS Properties, LLC*, 61 A.3d 414, 416 (R.I. 2013)). Therefore, a trial justice "'must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff's favor.'" *Multi-State Restoration, Inc.*, 61 A.3d at 416 (quoting *Laurence v. Sollitto*, 788 A.2d 455, 456 (R.I. 2002) (internal citations omitted)). This Court will grant a motion to dismiss only "if it 'appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts.'" *Laurence*, 788 A.2d at 456 (quoting *Rhode Island Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989)).

"However, when ruling on a motion to dismiss, if 'matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.'" *Multi-State Restoration, Inc.*, 61 A.3d at 417 (quoting Rule 12(b)(6)). In addition, "'when [a] motion justice receives evidentiary matters outside the complaint and does not expressly exclude them . . . , then Rule 12(b)(6) specifically requires the motion to be considered as one for summary judgment.'" *Id.* (quoting *Martin v. Howard*, 784 A.2d 291, 298 (R.I. 2001)). This Court will grant a motion for summary judgment if it concludes that "'no genuine issue of material fact exists and that the moving party is entitled

to judgment as a matter of law.'" *Multi-State Restoration, Inc.*, 61 A.3d at 417 (quoting *DeSantis v. Prelle*, 891 A.2d 873, 877 (R.I. 2006) (internal citations omitted)).

III

Analysis

The Court is cognizant that Plaintiff appears *pro se*, and that "courts have at times allowed greater latitude" to *pro se* litigants, but they "are not entitled to greater rights than are those represented by counsel." *Gray v. Stillman White Co., Inc.*, 522 A.2d 737, 741 (R.I. 1987) (internal citations omitted). The Court will not disregard procedural protections owed to both parties, nor will the Court "overlook a litigant[']s failure to prove his or her case simply because the party elected to proceed *pro se*." *Shorrock v. Scott*, 944 A.2d 861, 863-64 (R.I. 2008) (citing *Berard v. Ryder Student Transportation Services, Inc.*, 767 A.2d 81, 84 (R.I. 2001)).

A

Is Plaintiff Entitled to $150,000 in Winnings?

The parties do not dispute that Plaintiff is entitled to his initial winnings of $30,607.75. The crux of this matter is whether he is entitled to a payout of $150,000 as a matter of law. Plaintiff alleges that Twin River wrongfully withheld his initial winnings, which prevented Murphy from collecting and using those funds to place additional wagers at Plaintiff's direction. *See* Pl.'s Second Am. Compl. ¶ 56. Defendants argue that Plaintiff cannot prevail as a matter of law because (1) Twin River's House Rules prevent placing wagers on another's behalf; (2) the additional damages were unforeseeable and highly speculative; and (3) Plaintiff cannot present winning tickets "reflecting a right to collect $150,000 in winnings." (Defs.' Mot. 8-16.) Defendants contend that any recovery should be limited to the $30,607.75 currently held in the Court Registry. *Id.* at 14. For the reasons stated below, the Court agrees.

1

Does the Plaintiff Have Standing to Sue on His $150,000 Claim?

Defendants argue that Plaintiff is not entitled to a $150,000 payout because he lacks standing. *See* Defs.' Mot. 9-10. They rely on our Supreme Court's holding in *Valente v. Rhode Island Lottery Commission*, 544 A.2d 586 (R.I. 1988), which states that "[a] lottery winner's entitlement to a prize is governed by the principles of contract law." *Valente*, 544 A.2d at 589 (citations omitted). Defendants aver that, on October 9, 2021, Murphy physically placed wagers at Twin River. (Defs.' Mot. 10, 13-14.) Because the House Rules forbid placing wagers on someone else's behalf, Defendants claim that they are in privity with Murphy. *See id.* at 9, 10.

While the Court finds Defendants' argument persuasive, the Court must also note that a "lottery" is separate and distinct from "sports wagering," which is the subject activity here. In G.L. 1956 § 42-61.2-1(31), Rhode Island defines "[s]ports wagering" as:

> "[T]he business of accepting wagers on sporting events or a combination of sporting events, or on the individual performance statistics of athletes in a sporting event or combination of sporting events, by any system or method of wagering. The term includes, but is not limited to, exchange wagering, parlays, over-under, moneyline, pools, and straight bets, and the term includes the placement of such bets and wagers. However, *the term does not include, without limitation, the following:*
>
> > "(i) *Lotteries, including video lottery games and other types of casino gaming operated by the state, through the Division, as of June 22, 2018.*" Sec. 42-61.2-1(31)(i) (emphasis added).

Thus, the Court must first analyze whether, as with lotteries, engaging in sports wagering gives rise to a contract. The Rhode Island Supreme Court has yet to be faced with this issue. "The determination of whether a contract exists is a question of law[.]" Haviland *v. Simmons*, 45 A.3d 1246, 1257 (R.I. 2012) (citing *Nonnenmacher v. City of Warwick*, 722 A.2d 1199, 1202 (R.I.

1999)). "Under traditional contract theory, an offer and acceptance are indispensable to contract formation, and without such assent a contract is not formed." *Smith v. Boyd*, 553 A.2d 131, 133 (R.I. 1989). "'[F]or parties to form a valid contract, each must have the intent to be bound by the terms of the agreement.'" *Haviland*, 45 A.3d at 1258 (quoting *Weaver v. American Power Conversion Corp.*, 863 A.2d 193, 198 (R.I. 2004)).

This Court holds that lotteries and sports wagering are so substantially similar that it would be patently unreasonable to differentiate the two. The elements necessary for a contract are plainly evident in the sports wagering context. Here, Twin River offers a multitude of sports-betting games on which players may place wagers. A player "accepts" the offer of the game by willingly placing a wager. *See, e.g.*, Pl.'s Second Am. Compl. ¶¶ 4, 29-31. The bettor's exchange of a monetary wager for Defendants' promises to monitor the outcome of the wager and tender winnings is ample consideration.[7]

Moreover, the procedure by which a sports wagering transaction occurs is near-identical to a lottery transaction. Proof of a valid wager takes the form of a ticket. Defs.' Mot. 4; *see Valente*, 544 A.2d at 587. A "winning" wager nets a prize, which the player collects by presenting his ticket. *See* Defs.' Mot. Ex. B. 2 ¶ 2 ("No winning wager will be paid without the customer's wagering ticket."); *Valente*, 544 A.2d at 587. The vendor reserves the right to reject mutilated or unreadable tickets. Defs.' Mot. Ex. B. 2 ¶ 3; *see Valente*, 544 A.2d at 588. The Court determines

[7] "[C]onsideration 'consists of some legal right acquired by the promisor in consideration of his promise, or forborne by the promisee in consideration of such promise.'" *Andoscia v. Town of North Smithfield*, 159 A.3d 79, 82 (R.I. 2017) (quoting *DeLuca v. City of Cranston*, 22 A.3d 382, 384 (R.I. 2011)) (internal citations omitted). "It is well settled that a 'lottery' proscribed in either a state constitution or statute is defined as a scheme or a plan having three essential elements: consideration, chance, and prize." *Roberts v. Communications Investment Club of Woonsocket*, 431 A.2d 1206, 1211 (R.I. 1981) (citing *Goodwill Advertising Co. v. Elmwood Amusement Corp.*, 86 R.I. 6, 12, 133 A.2d 644, 647 (1957)).

that there is no material, procedural difference between lotteries and sports wagering to justify treating them differently, and therefore holds that sports wagering at a state-sanctioned facility forms a contract in the same fashion as purchasing a lottery ticket.

The Court further holds that Rhode Island's sports wagering rules and regulations form the terms of a sports bettor's contract. Here, the binding terms are found in the Rhode Island Sportsbook Retail Sports Wagering House Rules. *See* §§ 42-61.2-2.4(a) ("The state, through the division of lotteries, shall implement, operate, conduct, and control sports wagering at the Twin River gaming facility and the Twin River-Tiverton gaming facility . . . ."); 42-61.2-3.3(a) ("[T]he division director shall promulgate rules and regulations relating to sports wagering . . . ."). *See generally* Defs.' Mot. Ex. B. In *Valente*, the Rhode Island Supreme Court held that a clause on the back of a lottery ticket was a binding term in the contract between a bettor and the Lottery. *Valente*, 544 A.2d at 590. The Lottery argued—and the Court agreed—that the Lottery may promulgate and impose its own rules and regulations on its games. *See id.* at 588-90. The Court is also persuaded by *DePasquale v. Ogden Suffolk Downs, Inc.*, 564 N.E.2d 584 (Mass. App. Ct. 1990), in which the Massachusetts Appeals Court held that the rules imposed by the state are "part of the bettor's contract." *DePasquale*, 564 N.E.2d at 586. The Massachusetts Appeals Court determined that the rules promulgated by the Massachusetts State Racing Commission governed the parties' contract, and since their rules provided that "a person must hold a ticket to recover payment for a wager," the plaintiff could not recover without a winning ticket. *Id.* The Court finds no cognizable reason to hold differently with respect to sports betting, and thus holds that the regulations promulgated by the Lottery and in the Rhode Island Sportsbook Retail Sports Wagering House Rules govern a sports bettor's contract.

i

Did a Contract Exist Between the Parties on October 27, 2020?

The parties do not dispute that they entered a contract on October 27, 2020. *See* Defs.' Mot. 1-2; *see also* Defs.' Reply Ex. C. However, it is instructive to review the facts surrounding Plaintiff's October 27, 2020 wagers, which resulted in a contract between the parties, and compare those to the facts surrounding the October 9, 2021 wagers, which did not result in a contract. As stated above, the House Rules govern contracts between sports bettors and Defendants. So is the case here. There are two pivotal House Rules at play. The first is the Rule that states "[n]o winning wager will be paid without the customer's wagering ticket." (Defs.' Mot. Ex. B 2 ¶ 2.) The second is the Rule that states "[a]ll wagers will be deemed to have been accepted from the individual placing the wager only, and not on behalf of any entity or anyone else." (Defs.' Mot. Ex. B 1 ¶ 7.)

On October 27, 2020, Plaintiff wagered $13,000 across six tickets at Twin River. (Pl.'s Second Am. Compl. ¶ 4.) Plaintiff alleges that "[Twin River] knew that [he] had placed the bets" and that "[Twin River] had video surveillance of [him] placing the bets." *Id.* ¶¶ 9-10. Plaintiff's wagers on October 27, 2020 resulted in winnings of $30,607.75. *Id.* ¶ 8. Despite Plaintiff's winnings, Defendants could not furnish those winnings without the tickets, which Plaintiff admits he did not have in his possession. *Id.* ¶¶ 5, 11, 13; *see* Defs.' Mot. Ex. B 2 ¶ 2. It was not until Murphy presented the winning tickets with the POA that Defendants were prepared to release Plaintiff's winnings, because the House Rules governing the contract were satisfied.[8]

[8] The Court acknowledges, as Plaintiff avers, that there was a not-insignificant delay in Defendants' release of the $30,607.75. However, the Court is unconvinced that there was bad faith. *See* Defs.' Mot. 7 & n.9. Defendants were concerned about the validity and authenticity of the POA. *See id* at 7 n.9. After the POA was verified, "Defendants were prepared to make a payout to Plaintiff." *Id.* at 7; *see* Pl.'s Second Am. Compl. ¶¶ 42-44.

ii

Did a Contract Exist Between the Parties on October 9, 2021?

The Court now turns its attention to the wagers placed on October 9, 2021. Plaintiff avers that in or around July or August 2021, he learned that his winning tickets from October 27, 2020 were located at the Dartmouth Police Station. (Pl.'s Second Am. Compl. ¶ 16.) Before he could retrieve them, however, he was incarcerated at the Bristol County Jail in or about September 2021. *Id.* ¶ 18. Plaintiff therefore gave POA to Murphy, who traveled to the Dartmouth Police Station to obtain the winning tickets. *Id.* ¶ 19. Plaintiff further instructed Murphy to present the tickets and POA to Twin River, collect the $30,607.75 that was owed to Plaintiff, and use those funds on specific wagers. *Id.* ¶¶ 20, 29-31. Murphy presented the tickets to Twin River on or about October 9, 2021, but Twin River did not redeem them. *See* Defs.' Mot. 5, 13-14. Nevertheless, Murphy placed smaller wagers on the parlays. (Pl.'s Second Am. Compl. ¶ 33.) Plaintiff avers that two of those parlays were "winn[ers]." *Id.* ¶ 34.

Defendants argue that Plaintiff lacks standing to claim an interest in Murphy's wagers because the House Rules prohibit placing wagers on another person's behalf, and therefore Plaintiff did not enter into a contract with Defendants regarding these wagers. The Court agrees. "'Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit.'" *1112 Charles, L.P. v. Fornel Entertainment, Inc.*, 159 A.3d 619, 625 (R.I. 2017) (quoting *Genao v. Litton Loan Servicing, L.P.*, 108 A.3d 1017, 1021 (R.I. 2015)). The party asserting standing must show "an injury in fact that is '(a) concrete and particularized . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Id.* (quoting *Cruz v. Mortgage Electronic Registration Systems, Inc.*, 108 A.3d 992, 996 (R.I. 2015)). In addition, Rhode Island requires plaintiffs to

assert "their own rights, *not the rights of others*." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 535 (R.I. 2013) (emphasis added).

In contract disputes, "a party must be in privity of contract with the other party to have standing . . . ." *1112 Charles, L.P.*, 159 A.3d at 625. "'[A]n individual who [is] not a party to a contractual agreement lacks standing to challenge its validity.'" *Mruk*, 82 A.3d at 534-35 (quoting *DePetrillo v. Belo Holdings, Inc.*, 45 A.3d 485, 492 (R.I. 2012)).

Plaintiff readily admits that Murphy placed the wagers on or about October 9, 2021. *See* Pl.'s Second Am. Compl. ¶¶ 29-31, 33. The House Rules clearly state that "[a]ll wagers will be deemed to have been accepted from the individual placing the wager only, and not on behalf of any entity or anyone else." (Defs.' Mot. Ex. B 1 ¶ 7.) The operative language of the rule is self-evident: bettors can only place wagers for themselves. *See* Defs.' Mot. 9. Therefore, *Murphy* has a contract with Defendants as to the October 9, 2021 wagers, since he physically placed the wagers at Twin River. Because Plaintiff is not a party to the wagers, he lacks standing to make a claim regarding those wagers or any winnings therefrom.

Plaintiff argues that his POA should supersede the House Rules, but this argument is unavailing because the POA creates an agency relationship, which the House Rules preclude. *See* 3 Am. Jur. 2d *Agency* § 20 (2022). A POA is an instrument "by which one person, as principal, appoints another as his or her agent and confers . . . the authority to perform certain specified acts or kinds of acts *on behalf of the principal*." *Id.* (emphasis added). This relationship is precisely barred by the operative House Rule, which states, "[a]ll wagers will be deemed to have been accepted from the individual placing the wager only, and *not on behalf of any entity or anyone else*." (Defs.' Mot. Ex. B 1 ¶ 7 (emphasis added).) Thus, even with POA, Murphy's bets were his own, and Plaintiff has no interest in Murphy's wagers or winnings.

2

Are the Plaintiff's Alleged Damages Speculative?

Defendants next aver that Plaintiff's claim for $150,000 is based on "an exercise of rank speculation." (Defs.' Mot. 13-14.) Plaintiff wants the Court to believe that if Defendants had tendered $30,607.75 to Murphy on October 9, 2021 (which Defendants did not), *and* if Murphy was permitted to place wagers on Plaintiff's behalf (which he was not), *and* if he placed the *same amount* on the *same parlays* as alleged in the Second Amended Complaint, that Plaintiff would have won $150,000.[9] *See id.* The Court is not persuaded.

Under Rhode Island law, damages "'must be proven with a reasonable degree of certainty, and . . . must establish reasonably precise figures and cannot rely upon speculation.'" *Marketing Design Source, Inc. v. Pranda North America, Inc.*, 799 A.2d 267, 273 (R.I. 2002) (quoting *National Chain Co. v. Campbell,* 487 A.2d 132, 135 (R.I. 1985)). A plaintiff is "less likely to be permitted to show that [a] breach has caused the inability to make or perform other contracts collateral to the one broken . . . . The profits from those contracts may be regarded as too remote or too speculative." 11 Joseph M. Perillo, *Corbin on Contracts* 189 § 56.19 (2005).

Defendants argue that Plaintiff's allegations are made "with the benefit of hindsight" and rely on "nothing more than his say-so." (Defs.' Mot. 14.) The Court agrees. Plaintiff asks the Court to take his word *today* that he would have placed winning wagers on games *last year*. Entertaining this claim would undoubtedly lead to other, more speculative ones. The Court is not willing to open the floodgates to claims the day after the Mega-Millions drawing based on a plaintiff's allegation that he *would* have picked the winning numbers.

[9] At the hearing on Defendants' Motion to Partially Dismiss, Plaintiff also averred that he could have used his $30,607.75 on stocks, mutual funds, or a down payment on real property. For the same reasons, the Court finds these allegations just as speculative.

Even if Plaintiff could substantiate his claim with sufficient evidence, his claims are *impossible* under the House Rules. *See* Defs.' Mot. Ex. B 1 ¶ 7. Plaintiff avers that because Murphy did in fact win on the parlays, his winnings show that Plaintiff would have won more had Defendants tendered the $30,607.75. *See* Pl.'s Second Am. Compl. ¶ 35. As stated above, Plaintiff was never in a contract with Defendants regarding the October 9, 2021 bets because Defendants are not permitted to accept wagers on behalf of someone else. So, not only do the facts have to perfectly suit Plaintiff's narrative, Plaintiff also wants the Court to ignore all laws, rules, and regulations that shade against him. This the Court cannot do. Since Plaintiff cannot overcome factual improbabilities and legal impossibilities, his claim must fail as overly speculative.

3

Are Plaintiff's Alleged Damages Unforeseeable?

Next, Defendants aver that Plaintiff's demand for $150,000 must fail because it was unforeseeable that Plaintiff would use winnings from his October 27, 2020 wagers to finance his later ones. (Defs.' Mot. 11-12.) Defendants argue that they do not know the financial condition of their patrons, nor do they know their patrons' plans on what to do with their winnings, and thus Plaintiff's claim that he would have used his winnings *specifically* on future wagers was unforeseeable. *Id.* The Court agrees.

"Ordinarily, a party who breaches a contract has 'a duty to pay damages for the reasonably foreseeable consequences of the breach.'" *Andrews v. Lombardi*, 233 A.3d 1027, 1034 (R.I. 2020) (quoting *Horwitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248, 1251 (7th Cir. 1996)). Restatement (Second) *Contracts* § 351(1)-(2) provides:

> "(1) Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.

> "(2) Loss may be foreseeable as a probable result of a breach because it follows from the breach
>
> > "(a) in the ordinary course of events, or
> >
> > "(b) as a result of special circumstances, beyond the ordinary course of events, that the party in breach had reason to know."

Assuming *arguendo* that Defendants did breach their October 27, 2020 contract with Plaintiff (which they did not), it was unforeseeable *when the contract was made* that Plaintiff would use those winnings on future wagers. *See* Restatement (Second) *Contracts* § 351(1). Defendants could not know what Plaintiff would do with any winnings at the time that he made his wagers on October 27, 2020. *See* Defs.' Mot. 12. Additionally, Defendants could not know whether Plaintiff had access to other funds with which to wager in October 2021, as they correctly note that "a plaintiff seeking to recover damages related to the lost opportunity to use certain funds must be able to allege that it was foreseeable at the time of contract that the borrower would not be able to access alternative funding." *Id.* Thus, Plaintiff's claim must fail because Plaintiff's anticipated future use of any winnings from the October 27, 2020 wager was not within Defendants' contemplation when the wager was made.

Plaintiff argues that he is a career sports bettor, and it is "common sense that a regular active bettor/investor would use his $30,607.75 winnings for future bets and investments." (Pl.'s Obj. 6.) This very well may be true, but it is not relevant to the Court's analysis. For foreseeability, the Court looks to what the alleged party in breach had "reason to foresee as a probable result of the breach when the contract was made." Restatement (Second) *Contracts* § 351(1). Because Defendants did not (and could not) foresee what Plaintiff planned to do with any potential winnings when he placed his bets on October 27, 2020, his claim must fail.

4

Can Plaintiff Assert a Right to a $150,000 Payout Without a Winning Ticket?

Defendants finally aver that Plaintiff's claim for $150,000 in damages is meritless because Plaintiff cannot produce a ticket showing that he is entitled to such a payout. (Defs.' Mot. 15-16.) As discussed above, Plaintiff's remedies lie in contract law, and the House Rules set forth the governing terms of the contract between the parties. *See supra,* Part III.A. The House Rules plainly state that "[n]o winning wager will be paid without the customer's wagering ticket." (Defs.' Mot. Ex. B 2 ¶ 2.) The parties agree that the wagers Plaintiff argues *would have* yielded $150,000 were not made in October 2021. *E.g.,* Defs.' Mot. 16. Plaintiff therefore does not have a ticket to present to collect his alleged winnings of $150,000, in contravention of the House Rules. Since Plaintiff does not possess a ticket entitling him to these winnings, his claim must fail. Ultimately, any alleged entitlement to a payout exceeding $30,607.75 is without merit. Plaintiff's Count II seeking a declaratory judgment must be dismissed.

B

Plaintiff's Count I, Alleging Violations of the DTPA, Fails Because the DTPA Excludes Activities Regulated by State Agencies

Plaintiff alleges in Count I that Defendants violated the Deceptive Trade Practices Act (the DTPA), G.L. 1956 chapter 13.1 of title 6. *See* Pl.'s Second Am. Compl. ¶ 65. The DTPA "provides a private right of action to any person who suffers 'any ascertainable loss' as the result of an illegal act or practice." *Park v. Ford Motor Co.*, 844 A.2d 687, 693 (R.I. 2004). Defendants argue, however, that the DTPA does not allow for private causes of actions when the activity is regulated by a government agency. *See Chavers v. Fleet Bank (RI), N.A.*, 844 A.2d 666, 670 (R.I. 2004). Since gaming is regulated by the Lottery, Defendants aver that Twin River's activities

cannot give rise to a private cause of action under the Consumer Protection Act. *See* Defs.' Mot. 18. The Court agrees.

Under § 6-13.1-4, the DTPA *shall not apply* "to actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state . . . ." Section 6-13.1-4. "When the party claiming exemption from the [DTPA] shows that the general activity in question is regulated by a 'regulatory body or officer' within the meaning of § 6-13.1-4, the opposing party . . . has the burden of showing that the specific acts at issue are not covered by the exemption." *State v. Piedmont Funding Corp.*, 119 R.I. 695, 700, 382 A.2d 819, 822 (1978).

"'[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" *Crenshaw v. State*, 227 A.3d 67, 71 (R.I. 2020) (quoting *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012)). If there is an ambiguity, the Court must "'apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.'" *Powers v. Warwick Public Schools*, 204 A.3d 1078, 1086 (R.I. 2019) (quoting *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014)).

Defendants, specifically Twin River, conduct their sports wagering activities pursuant to regulations promulgated by the Division of the Lottery, a state regulatory agency. Section 42-61.2-2.4(a) ("The state, through the division of lotteries, shall implement, operate, conduct, and control sports wagering at the Twin River gaming facility and the Twin River-Tiverton gaming facility, once Twin River-Tiverton is licensed as a video-lottery and table-game retailer. In furtherance thereof, the state, through the division, shall have full operational control to operate the sports wagering . . . ."). The language of the statute clearly states that the sports wagering

activities conducted by Twin River are "regulated by a 'regulatory body or officer'" as is necessary to claim exemption under the DTPA. *See Piedmont*, 119 R.I. at 700, 382 A.2d at 822.

Furthermore, Plaintiff has not articulated a reason why these activities "are not covered by the exemption." *See id.* Because a plain reading of § 6-13.1-4 shows that Defendants' activities are exempted from the DTPA, Count I is dismissed.

C

Plaintiff's Count III, Alleging Violations of §§ 42-61.2-1 to 42-61.2-16, Fails Because the Statute Does Not Provide a Private Remedy

Plaintiff next alleges in Count III that Defendants violated §§ 42-61.2-1 to 42-61.2-16 by "not paying Oliveira immediately upon winning the wagers . . . and by not paying Murphy after Defendants cashed out the winning tickets." (Pl.'s Second Am. Compl. ¶ 67.) Defendants aver that these sections of the Rhode Island General Laws do not provide a private right of action, they merely permit sports wagering generally. (Defs.' Mot. 20.) The Court agrees, because §§ 42-61.2-1 to 42-61.2-16 do not provide any private remedy.

Prescribing remedies by statute "'is a legislative responsibility [and] not a judicial task.'" *Stebbins v. Wells*, 818 A.2d 711, 716 (R.I. 2003) (quoting *Cummings v. Shorey*, 761 A.2d 680, 685 (R.I. 2000)). Where the General Assembly fails to include a private right of action within a statute, the Court holds that "'no private cause of action for damages [under the statute] was intended.'" *Id.* (quoting *Cummings*, 761 A.2d at 685).

After reviewing the relevant statutes, the Court concludes that no private right of action was included by the General Assembly for any violations thereof. *See* §§ 42-61.2-1 to 42-61.2-16. The statute merely enables the state to operate casino games, including sports wagering. *Id.* The only means of enforcement stems from the state and its regulatory agencies. *See* §§ 42-61.2-3; 42-61.2-13. Because no *private* right of action was included in the statute, the Court presumes that

the General Assembly did not intend to grant private citizens a right to sue under this chapter. *See Stebbins*, 818 A.2d at 716. Thus, if no private right of action was intended, Count III cannot stand and must be dismissed.

D

Plaintiff's Count IV for "Tort" is Not a Cognizable Claim

Next, Plaintiff asserts in Count IV that Defendants committed a "tort." (Pl.'s Second Am. Compl. ¶¶ 68-69.) Plaintiff specifically alleges:

> "68. Defendants' actions caused Plaintiff harm.
> 69. Plaintiff incurred damages." *Id.*

The Court dismisses this claim because it does not give Defendants fair and adequate notice as required under Rule 8(a) of the Superior Court Rules of Civil Procedure. Rhode Island takes a "liberal approach" to pleadings. *See Oliver v. Narragansett Bay Insurance Co.*, 205 A.3d 445, 451 (R.I. 2019). A plaintiff is not required to plead "the ultimate facts that must be proven," nor is he required "to set out the precise legal theory upon which his or her claim is based." *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992). Instead, a plaintiff must only provide "fair and adequate notice of the type of claim being asserted." *Id.*; *see* Super. R. Civ. P. 8(a).

Rhode Island's notice pleading standard has its limits, however, and claims that are severely lacking in detail or are ambiguous will not be heard. For instance, the Rhode Island Supreme Court held in *Konar v. PFL Life Insurance Co.*, 840 A.2d 1115, 1119 (R.I. 2004) that the plaintiff could not proceed on a premises liability claim where he merely pled negligence. *Konar*, 840 A.2d at 1119. The plaintiff in *Konar* alleged that the defendant was negligent in failing to provide security after he was attacked on the defendant's property. *Id.* at 1116-17. The Court reasoned that "[b]y generally mentioning the word 'negligence' in a complaint, without alleging

breach of a particular duty, it is not clear whether a defendant must defend a general negligence claim, a premises liability claim, or a claim for negligent supervision or hiring." *Id.* at 1119.

Here, Plaintiff's claim is even broader. In *Konar*, the plaintiff pled "negligence," which already provides a wide array of legal theories. Here, though, Plaintiff alleges in Count IV that Defendants committed a "tort," which opens the door for *any legal theory in all of tort law*. *See* Pl.'s Second Am. Compl. ¶¶ 68-69. Defendants correctly point out that there is no cause of action for "torts," generally. (Defs.' Mot. 22.) Count IV is simply too broad for the Court to consider it "fair and adequate notice" under Rule 8(a). Thus, Plaintiff's Count IV must be dismissed.

E

Plaintiff's Count V for "Threats, Intimidation & Coercion" is Not a Cognizable Claim

Finally, Plaintiff alleges in Count V of the Second Amended Complaint that Defendants engaged in "threats, intimidation and coercion" by "oppos[ing] the return of Plaintiff's winnings" and "mandating that Plaintiff dismiss all claims against them in return for the return of his money." (Pl.'s Second Am. Compl. ¶¶ 70-71.) Specifically, Plaintiff avers that Defendants are withholding his $30,607.75 and will not release his winnings to him unless he signs a Release of Claims form. *See id.* ¶ 53; Pl.'s Opp'n 8; Defs.' Reply Ex. A. Defendants argue that "threats, intimidation, and coercion" is not a cognizable claim, and assuming that it is, Defendants did not engage in behavior rising to that level. (Defs.' Suppl. Mot. 2.) The Court agrees and holds that Plaintiff's claim must fail because there is no cognizable claim for "threats, intimidation and coercion."

Once again, pleadings must provide "fair and adequate notice of the type of claim being asserted." *See Haley*, 611 A.2d at 848. Defendants aver that there is "no precedent in [Rhode Island] recognizing a civil cause of action for mere threats, intimidation, or coercion, nor is any such claim announced in the Restatement (Second) of Torts, short of threats of bodily harm . . . ."

(Defs.' Suppl. Mot. 1-2.) The Court agrees. Even if the Court were to construe the pleadings *very liberally*, the closest, analogous claim in contract would be duress or undue influence. *See* 17A C.J.S. *Contracts* § 253 (2022). However, this fails because *even if* there was conduct rising to the level of duress or undue influence, both claims are defenses to a contract's *validity*. *Id.*; *Lavoie v. North East Knitting, Inc.*, 918 A.2d 225, 228 (R.I. 2007). However, Plaintiff refused to sign the Release of Claims form, so Plaintiff cannot rely on duress or undue influence to contest the validity of a contract that was never entered.

Even if Plaintiff's claim provides "fair and adequate notice," Defendants' conduct does not rise to the level of "threats, intimidation, and coercion." Defendants do not dispute that Plaintiff is owed $30,607.75, and Defendants deposited that amount into the Registry of the Court. Defendants offered to release the funds to Plaintiff if he released his claims as to those funds. (Defs.' Reply Ex. A.) The form states clearly that "[t]he claims for damages in the amount of $150,000.00 . . . are hereby not released, and, therefore, remain pending in the Action . . . ." *Id.* Thus, the only claims that would have been released would be the claims for the initial $30,607.75. *See id.* The fact that Defendants wish to resolve the dispute outside of court does not, without more, constitute "threats, intimidation, or coercion," and is, in fact, encouraged in this jurisdiction. *See Calise v. Hidden Valley Condominium Association, Inc.*, 773 A.2d 834, 839 (R.I. 2001). Thus, even if Plaintiff's claim survives under Rhode Island's notice pleading standard, Plaintiff has not alleged any conduct that would conceivably amount to "threats, intimidation, and coercion."

IV

Conclusion

For the above reasons, Defendants' Motion to Partially Dismiss Plaintiff's Second Amended Complaint is GRANTED. Counsel for Defendants shall prepare and file an Order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**John Oliveira v. Rhode Island Lottery, et al.**
CASE NO:	**PC-2021-03645**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 5, 2022**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**John Oliveira, *pro se***
For Defendant:	**Marissa D. Pizana, Esq.** **Kyle Zambarano, Esq.** **Brendan F. Ryan, Esq.**